

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0066P  
Gross and Adjusted Gross Income Tax  
Calendar Years ended 12/31/97, 12/31/98, and 12/31/99**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer leases mobile office and storage units in the United States and Canada. Taxpayer also sells new and previously leased mobile office units and provided delivery, installation, and other ancillary products and services. At audit it was determined that the taxpayer failed to report its lease income at the high rate of tax. Taxpayer did include it in the low rate. Taxpayer reported no revenue at the high rate. Taxpayer also failed to add back property taxes and made errors in its apportionment detail.

Taxpayer filed a penalty protest letter dated October 30, 2001 and a hearing was scheduled for Tuesday, February 19, 2002 at 9:00 a.m. Taxpayer failed to appear and a determination is made based upon information contained in the audit file.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it makes every good faith effort to pay all taxes in an accurate, complete and timely manner. Taxpayer further states that despite its best efforts, it apparently did not fully understand and comply with the regulations in calculating Gross Income Tax and the errors were simply a misunderstanding of the complex regulations covering the Indiana Gross Income Tax Calculation.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use

such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to report clearly taxable high rate income at the high rate of tax, or more than fifty percent (50%) of its tax for all years at audit and has not provided reasonable cause to allow the department to waive the penalty.

### **FINDING**

Taxpayer's protest is denied.